

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Reform of the FCC Form 477 Data Program	)	WC Docket No. 11-10
	)	
Establishing the Digital Opportunity Data Collection	)	WC Docket No. 19-195
	)	

**COMMENTS  
OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

Respectfully submitted,



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**I. INTRODUCTION AND SUMMARY**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these comments in response to the Public Notice issued by the Federal Communications Commission’s (“Commission”) Broadband Data Task Force, the Wireless Telecommunications and Wireline Competition Bureaus, and the Office of Economics and Analytics (collectively “the BDTF”).<sup>2</sup> The Public Notice solicits feedback for a report to Congress that will evaluate Broadband Data Collection (“BDC”) “challenge processes and consider whether the Commission should commence an inquiry on the need for other tools to help identify potential inaccuracies in BDC data and improve the accuracy of those data.”<sup>3</sup>

NTCA encourages the Commission to pursue additional tools, such as those discussed below, to ensure that the BDC’s bulk availability challenge process enables more meaningful

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<sup>1</sup> NTCA represents approximately 850 rural local exchange carriers (“RLECs”). All of NTCA’s members are voice and broadband providers, and many of its members provide wireless, video, and other competitive services to their communities.

<sup>2</sup> *Broadband Data Task Force Seeks Comment on the Broadband Data Collection Challenge Processes*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 24-64 (rel. Jan. 19, 2024) (“Public Notice”).

<sup>3</sup> *Id.*, p. 1.

assessments of claimed service coverage and ultimately improves the accuracy of the National Broadband Map (“NBM”). NTCA members’ experience from participating in the bulk availability challenges is that the current process and BDC challenge codes are not well calibrated to highlight and correct wide-ranging and far-reaching overstatements of coverage, especially in the case of certain technologies. In particular, the bulk availability challenge process would be more efficient and yield more reliable and trustworthy results by (1) minimizing the need for challenges in the first instance and streamlining challenges where they must nonetheless be raised by requiring all fixed wireless operators to submit the same kind of data (specifically that found in Section 7 of the BDC Data Submission Specifications<sup>4</sup>) regardless of how they choose to report availability, (2) allowing would-be challengers to view, subject to the Commission’s protective order rules, such supporting data for the purposes of considering whether to file availability challenges, and (3) better aligning the BDC challenge codes with the circumstances that prompt the filing of a challenge. NTCA recommends as well that the Commission ensure challengers are better notified of the status of Broadband Serviceable Location (“BSL”) “Fabric” challenges.

## **II. THE CURRENT BROADBAND DATA COLLECTION BULK AVAILABILITY CHALLENGE PROCESS HINDERS MEANINGFUL ASSESSMENTS OF AND CHALLENGES TO POTENTIALLY OVERSTATED COVERAGE CLAIMS.**

### **A. Better supporting data from fixed wireless providers is critical to assess their realistic capabilities to deliver service as claimed.**

Creating and updating the NBM is a complicated and time-consuming “iterative” process. It requires ongoing corrections to, and refinement of, both the underlying “Fabric” and

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<sup>4</sup> Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data (March 30, 2023) (“*BDC Specifications*”), Section 7, pp. 32-49, available at: [bdc-availability-data-specifications.pdf](#) | Powered by Box.

availability claims made atop that, with these efforts turning upon the careful review of complex technical and factual details. The accuracy of the map and the efficiency of challenge processes, however, could be enhanced significantly by improving the information that is obtained upfront in support of availability claims. Rather than compelling challengers to prove a negative by guessing what is “behind the curtain” of BDC availability claims, and rather than the BDTF itself being compelled to operate from a deficit of data simply because of how a provider elects to submit its BDC reports, the Commission can and should take simple steps to set proper incentives for accurate and more thorough submissions upfront. This will in turn minimize the need for availability challenges and thereby allow more efficient and effective focus upon the fewer challenges that still arise thereafter. For example, the *Public Notice* references 2.2 million “conceded” fixed availability challenges out of 3.7 million filed.<sup>5</sup> While this makes for a better map, this should not be seen as a success story. To the contrary, this should be seen as a “red flag” that, whether by intent or neglect, providers are submitting coverage claims that do not correspond to reality on the ground and only correcting them after those errors are caught by someone else. A better evidentiary foundation in the initial submissions would almost certainly help to minimize such erroneous reporting upfront and in turn reduce the volume of challenges required on the back end to set the record straight.

Recent BDC availability submissions help to illustrate the scope of these concerns and highlight the need to gather better information upfront, in lieu of the Commission being compelled to adjudicate a flood of challenges in the face of imperfect and incomplete information. As one example, LTD Broadband, LLC (“LTD”) purports to offer at least 150/50

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<sup>5</sup> Public Notice, p. 5.

Mbps symmetrical broadband service using unlicensed fixed wireless spectrum to over 300,000 locations across a geography composed of what appears to be more than one-third of each of Minnesota and Iowa and sizeable portions as well of Nebraska and South Dakota. Yet it has provided no meaningful data to back up this claim, frustrating attempts to assess its veracity; no propagation model has been submitted, and even the explanation provided for its submission lacks reasonably sufficient detail. Similarly, Nextlink, claiming in the BDC to serve every location across significant portions of rural Nebraska indicates elsewhere that, during times of high demand and during specific peak usage hours, capacity on its network will be allocated among customers equally.<sup>6</sup> This raises the question of how often across this area customers in fact realize the speeds claimed by the provider on the BDC. Unfortunately, there is no meaningful way to make that assessment in the absence of any information within the BDC as to network design and capability.

In the face of such claims, those seeking to lodge a challenge are left to “prove a negative,” and as noted below, the BDC challenge processes are not properly calibrated for the magnitude of disputes in the face of sweeping claims to serve tens or even hundreds of thousands of locations. Moreover, as NTCA has previously noted in a related context and explains further below, the current availability challenge codes are often inapt for would-be challengers to address those claims, at least in current form.<sup>7</sup>

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<sup>6</sup> Attachment A.

<sup>7</sup> NTCA–The Rural Broadband Association, Petition for Reconsideration and/or Clarification, WC Docket No. 10-90, et al. (fil. Sept 15, 2023), pp. 6-9 (noting the implications of overstated coverage claims on enhanced Alternative Connect America Cost Model (“A-CAM”) offers and overall the inability of the current availability challenge process to enable the Commission to adequately determine the presence of unsubsidized competition in High-Cost Universal Service Fund support areas).

Stepping back, factors critical to assess fixed wireless providers' ability to meet claimed service levels are often not available for Commission or challenger review under current BDC filing specifications.<sup>8</sup> Specifically, data such as "Propagation Model Details," "Fixed Wireless Base Station Location and Height" and "Fixed Wireless Link Budget Parameters"<sup>9</sup> are only submitted by "[p]roviders of terrestrial fixed wireless broadband service that submit coverage maps (as opposed to a list of locations.)"<sup>10</sup> This leaves the Commission without access to critical technical details that underpin availability claims, and this almost certainly provides a strong incentive for operators to submit lists of BSLs rather than shapefiles that would require greater initial justification and thus could be more carefully scrutinized. Meanwhile, challengers, who lack access to such data even when provided to the Commission, are frustrated in attempting to assess reporting providers' ability to perform as promised in the face of terrain, distance, and other factors that can degrade or limit the quality or reach of service.

To reduce the need for challenges in the first instance and enable more efficient and effective review of those that nonetheless arise, NTCA therefore urges the Commission to apply the data specifications discussed above to *all* fixed wireless submissions whether made via shapefiles or BSL lists. This should establish better incentives for more accurate filings if providers are required to "show their work" behind coverage claims, and at the very least ensures the Commission has on hand what it needs to respond to challenges without regard to the method chosen for initial reporting.

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<sup>8</sup> *See, BDC Specifications.*

<sup>9</sup> *Id.*, Section 7, pp. 32-49.

<sup>10</sup> *Id.*, p. 32.

Relatedly, the Commission should permit potential challengers access to such data as well in the interest of facilitating more informed challenges and reducing the need for them where the underlying data make clear the availability claim in question is in fact warranted. It is difficult, if not impossible, to assess providers' coverage claims – particularly over large rural geographic areas with large numbers of locations – without access to the underlying assumptions that form the basis of such coverage claims, such as the propagation models used, base station locations and height, and many of the other things found in Section 7 of the *BDC Specifications*. NTCA recognizes that certain of this information contained will be confidential and/or proprietary, and that public review of commercially sensitive data could have competitive implications. Such confidentiality concerns could however be mitigated through use of the agency's time-tested and well-established protective order processes.

While these recommendations relate to the submission of data upfront in the BDC reporting process, they represent perhaps the most meaningful steps the Commission could take to improve the workings of the challenge processes and ultimately result in more accurate maps. Although these measures might place some incremental burden on BDC filers upfront, they should substantially reduce the number of challenges that filers face thereafter (presuming the data justify the coverage claims), resulting in a benefit to these filers, to those who would otherwise pursue challenges in the absence of such information, and to the Commission and its staff. Moreover, to the extent that some challenges are nonetheless raised, these recommendations should make those remaining challenges far more efficient as well, with the Commission (and challengers too potentially) having better data readily on hand to assess the merits of any such challenges.



**B. “Challenge codes” should be recalibrated to account for the circumstances that prompt the filing of a challenge and in a manner that would ensure they are effective in identifying inaccurate coverage claims.**

NTCA members have found that the current availability challenge codes are not always properly calibrated to the specific inaccuracies they see in providers’ availability submissions and that prompt a challenge. These could be amended as suggested below to produce a more effective and efficient challenge process.

**1. Bulk Challenge Code 6: “Provider does not offer the speed(s) shown on the Broadband Map for purchase at this location.”**

NTCA member feedback indicates that Bulk Challenge Code 6 is, in many cases, neither useful nor practical for demonstrating overstated broadband speed claims. Although there are several categories of evidence that challengers can submit to utilize this challenge code for disputing claims such as this – “Knowledge of Infrastructure,” “Information Collected from Individual Consumers” or “other methodology,”<sup>11</sup> – would-be challengers often lack access to such information, and thus have little recourse but to subscribe to the service offered by a provider to measure the quality of service actually available at an individual location. Doing so or otherwise engaging in “secret shopper” efforts<sup>12</sup> is obviously quite expensive and time-consuming on anything more than a “sampling” basis in the face of claims that carpet hundreds

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<sup>11</sup> *Overview of Bulk Fixed Availability Challenges*, Federal Communications Commission (Updated 10/05/2023), available at: <https://help.bdc.fcc.gov/hc/en-us/articles/10389893104923-Overview-of-Bulk-Fixed-Availability-Challenges>.

<sup>12</sup> NTCA member feedback indicates that they have engaged in “secret shopper” efforts, comparing claims made in BDC submissions with advertised speed on these same providers’ websites and other marketing materials, and in turn noting in challenges that at a mismatch between the two indicates a potential overstatement on the BDC. Yet, while this data is informative to some extent, it is hardly dispositive of the issue and fails to elucidate the actual network performance as to a specific location.

of miles of rural geography and tens or even hundreds of thousands of locations across several states.

At the very least, the Commission should amend the process to allow for a “sampling” of data to trigger a broader agency inquiry. Specifically, once a threshold number of locations (or perhaps a defined statistically significant sample) are challenged using the methods referenced above within a particular geographic area, that should serve as *prime facie* evidence of a potentially larger overstatement of coverage across the broader geographic area. This should in turn trigger the Commission’s challenge reply and resolution processes for that larger geographic area utilizing the current BDC data verification rules.<sup>13</sup>

**2. Bulk Challenge Code 7 “Subscribed Speeds Not Achievable.”**

As an alternative to cumbersome “secret shopper” efforts, speed test submissions that would offer better evidence of overstated claims, and which could potentially be collected on a more widespread basis, are currently disregarded through the bulk availability challenge process. These must instead be submitted as “crowdsourced” data and effectively adjudicated as individual consumer complaints. The Commission should combine these measures, and permit parties to submit large batches of speed tests as “bulk availability” challenges as well subject to well-defined protocols that ensure the tests are reflective of performance across a wider area.

**3. Bulk Challenge Code 8 “No wireless or satellite signal is available at this location.”**

The Commission should amend Challenge Code 8 consistent with the discussion in Section II.A., *supra* to clarify that challenging providers can use data such as signal frequency, tower locations, equipment height, signal power as evidentiary submissions. The current list of

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<sup>13</sup> 47 CFR § 1.7006, *et seq.*

acceptable evidence for filing a challenge under Challenge Code 8 does not permit an analysis of whether every single location within a claimed coverage area can truly be served once capacity and signal strength limitations are taken into account.

**C. Additional steps are necessary to increase the efficiency and efficacy of the bulk Fabric challenge process.**

The Public Notice seeks comment on whether the BDC challenge processes are sufficiently “user-friendly” and invite increased participation by providers and other interested parties.<sup>14</sup> NTCA member feedback indicates that providers have little visibility into the handling of bulk Fabric challenges.

*First*, the system itself is cumbersome, with uploads of challenges taking a long time to process. *Second*, there appears to be little to no communication as to whether a Fabric challenge has been accepted after filing. *Third*, after submission, several months or more can elapse before any response or resolution to a challenge itself is communicated (and in many cases none is ever provided). In fact, several members have reported that the only way to determine the status of a challenge is review of those same locations after a new Fabric version is released. This requires combing through records and the updated Fabric version (which itself may include several new or removed locations across a provider’s service area) to determine which locations challenged remain in need of further challenge or where inaccuracies were resolved. Where inaccuracies remain and there has been no communication regarding previously lodged Fabric challenges, this leaves the choice of resubmitting those challenges without knowing whether review remains pending with respect to the prior challenges or whether the new Fabric represents a rejection of those challenges.

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<sup>14</sup> Public Notice, p. 5.

These factors result in the expenditure of substantial resources by small businesses without clear indication that such effort is necessary or warranted. Yet resolution of these challenges is critically important, leaving these small businesses with no choice but to pursue potentially repetitive bulk Fabric challenges. Buildout obligations for certain High-Cost Universal Service Fund programs, as well as state and federal grant initiatives, are tied to locations, and large numbers of either missing or misidentified BSLs can materially alter a provider's ability to meet its obligations.

Thus, at the very least, the bulk Fabric challenge process should (1) indicate acceptance or rejection is given to challenging parties for all challenges submitted within 30 days, and (2) provide status updates on accepted challenges. As to the latter, the resolution of the challenge by the Commission or the Fabric vendor should in all instances be communicated to challengers directly and specifically, rather than leaving challengers trying to guess whether a new Fabric release indicates acceptance, rejection, or continuing pendency of prior challenges. Should either the Commission or the Fabric vendor require additional evidence from the challenger to support its dispute, that should be communicated expeditiously as well.

### **III. CONCLUSION**

For the reasons set forth above, the Commission should take several simple steps to ensure that the BDC's bulk availability and Fabric challenge processes are more efficient, enable more meaningful assessments of claimed service coverage, and ultimately improve the accuracy of the NBM.

Respectfully submitted,



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engineered the NEXTLINK INTERNET Network to provide consistent high-speed data services, some network management for these scenarios is required, because very heavy data usage by even a few Subscribers at times and places of competing network demands can affect the performance for all Subscribers.

## I. NETWORK MANAGEMENT PRACTICES

**A. Blocking:** Other than reasonable network management practices disclosed below, we do not block or otherwise prevent a Customer from lawful content.

**B. Throttling:** Other than reasonable network management practices disclosed below, we do not throttle or otherwise degrade or impair access to lawful Internet traffic on the basis of content, application, service, user, or use of a non-harmful device.

**C. Affiliated Prioritization:** We do not directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, or resource reservation, to benefit any of our affiliates, defined as an entity that controls, is controlled by, or is under common control with NEXTLINK INTERNET.

**D. Paid Prioritization:** We do not directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, or resource reservation, in exchange for consideration, monetary or otherwise.

**E. Congestion Management:** Our Service is provided on a "best efforts" basis and our congestion management practices are in place to ensure that all Subscribers experience as high-quality service under varying usage periods. Our typical frequency of congestion is typically between 7:00 PM and 11:00 PM local time. Subscribers select how much high-speed data they receive under a designated Service plan; the specific Service plan is set forth in the Confirmation of Sale ("COS"). In a manner consistent with our Service Agreement and Privacy Policy, we may monitor network traffic to ensure capacity is sufficient to maintain an efficient network load, to perform diagnostics and to otherwise manage and enhance the NEXTLINK INTERNET Network. To help manage traffic on the NEXTLINK INTERNET Network, during times of high demand, we may allocate available bandwidth among Subscribers on an equal basis, by account level. In addition, we may prioritize certain applications, such as public safety and voice, over other traffic types.

i. We may monitor traffic for our own internal purposes, including, but not limited to, billing, internal metrics, and first-party marketing purposes as permitted by law. We do not monitor traffic information through deep-packet inspection. We do not share any traffic information with unaffiliated third parties for non-network management purposes without your consent.

ii. If we determine, in our sole and reasonable discretion, that the manner in which a Customer is using the Service negatively impacts other Subscribers or the NEXTLINK Network, we reserve the right to apply additional congestion management techniques.